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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

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ANTHONY HARRIS,)
Plaintiff,)
vs.) CASE NO. CV 02-N-712-W
KEVIN MCKINLEY, et.al.,)
Defendants.)

Best ENTERED

JUN 11 2003

MEMORANDUM OF OPINION

This is a civil action pursuant to 42 U.S.C. § 1983 filed by the plaintiff, Anthony Harris, and transferred to this district on March 20, 2003. In his *pro se* complaint, plaintiff names Sumter County Detention Officers David Rowery, Thomas Lewis, and Robert Cortell as defendants.¹ He contends that defendants Rowery, Lewis and Cortell violated his constitutional right to be free from cruel and unusual punishment by subjecting him to excessive force. As compensation for the alleged constitutional violation, plaintiff seeks monetary relief.

On May 12, 2003, the magistrate judge entered a report and recommendation, recommending that summary judgment be denied as to the above named defendants. No objections have been filed by either party.

Having carefully reviewed and considered *de novo* all the materials in the file, including the report and recommendation, the Court is of the opinion that the magistrate judge's findings of fact and conclusions of law are due to be and are hereby ADOPTED and his recommendation is ACCEPTED. The Court finds that the defendants' motion for summary judgment is due to be DENIED as follows:

¹ Plaintiff named additional defendants and claims in his original complaint. However, those claims were dismissed by Honorable Charles Butler, Jr., Chief District Court Judge for the United States District Court for the Southern District of Alabama, on January 4, 2002, pursuant to 28 U.S.C. 1915(e)(2)(B)(i).

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1. The Court EXPRESSLY FINDS that there are genuine issues of material fact showing that defendants Rowery, Lewis, and Cortell subjected the plaintiff to excessive force. Therefore, defendants Rowery, Lewis, and Cortell are not entitled to judgment as a matter of law.

Accordingly, the excessive force claim against defendants Rowery, Lewis, and Cortell is due to be REFERRED to magistrate judge Paul W. Greene for further proceedings.

An appropriate order will be entered.

DATED this 17 day of June, 2003.



L. SCOTT COOGLER
UNITED STATES DISTRICT JUDGE